

SENATE NO. 456

AN ACT FURTHER REGULATING ELECTIONS TO PROVIDE FOR A VOTER CONSENT “NONE OF THE ABOVE” OPTION

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1.

2 Whereas government should secure the consent of the governed;

3 Whereas all legitimate consent requires the ability to withhold consent;

4 Whereas voters can withhold their consent when voting on questions;

5 Whereas voters are sometimes presented with such choices on the ballot that none of the listed
6 candidates for an office is acceptable, but voters are unable to withhold their consent to such elections
7 to office.

8 Whereas Article VII of the Massachusetts Constitution states: “Government is instituted for the
9 common good; for the protection, safety, prosperity and happiness of the people; and not for the profit,
10 honor, or private interest of any one man, family, or class of men: Therefore the people alone have an
11 incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or
12 totally change the same, when their protection, safety, prosperity and happiness require it.”;

13 Therefore, to insure the legitimate consent of voters by enabling them to withhold their consent to
14 elections to office;

15 Be it enacted by the Senate and House of Representatives in General Court Assembled, and by the
16 authority of the same, as follows:

17 The General Laws are hereby amended by adding the following chapter:

18 CHAPTER 57A.

19 ELECTIONS WITH VOTER CONSENT “NONE OF THE ABOVE” OPTIONS

20 Section 1. None of the Above (NOTA) on the ballot

21 On all ballots electing a candidate to office there shall appear, after the list of
22 candidates for each office, a votable line identified with the words “None of the Above; For a New
23 Election”.

24 A voter may choose to vote for “None of the Above; For a New Election” instead of
25 voting for a candidate. If a voter may vote for multiple candidates for an office, a vote for “None of the
26 Above; For a New Election” counts as one vote. Votes cast for “None of the Above; For a New
27 Election” shall be counted and reported as are votes for listed candidates.

28 Section 2. When a candidate receives fewer votes than NOTA

29 Any candidate for office who receives fewer votes than the votes cast for “None of the
30 Above; For a New Election” for that office shall not be elected.

31 Section 3. NOTA election

32 In any election where no candidate is elected to an office because of votes cast for
33 “None of the Above; For a New Election”, a None of the Above, hereinafter referred to as NOTA,
34 Election shall be held to fill that office not less than sixty (60) days and not more than eighty (80) days
35 after the prior election.

36 Section 4. Election of the President of the United States

37 In elections to the offices of President and Vice President of the United States and their
38 electors, “Prefer None of the Above” shall appear after the list of candidates. Voters may choose to
39 vote both for “Prefer None of the Above” as well as for a candidate. Votes cast for “Prefer None of the

40 Above” shall be counted and reported in the same manner as are votes for listed candidates, but shall
41 not otherwise affect the election outcome.

42 Section 5. Statement about NOTA options

43 The Secretary of State shall prepare a statement titled “Your Voter Consent Ballot
44 Options:”, to be displayed, along with any other materials determined by the Secretary of State, so it is
45 legible to voters at the polling place prior to voting as well as within each voting enclosure, indicating
46 the options available to the voter. For example, such a statement might contain the following:

47 Your Voter Consent Ballot Options:

48 YOU MAY VOTE FOR A CANDIDATE OR “None of the Above; For a New
49 Election”.

50 O Candidate A

51 O Candidate B

52 O None of the Above; For a New Election

53 When “None of the Above; For a New Election” appears on the ballot after the
54 list of candidates for an office, then you may vote for “None of the Above; For a New
55 Election” instead of voting for a candidate. If you may vote for more than one candidate
56 for an office, then a vote for “None of the Above; For a New Election” counts as one
57 vote.

58 If “None of the Above; For a New Election” receives more votes for an office
59 than any candidate, then no one is elected to that office and a new election with new
60 candidates must be held, not less than 60 days and not more than 80 days after this
61 election, to fill the office.

62 YOU MAY VOTE FOR A CANDIDATE AND FOR “Prefer None of the
63 Above.”

64 O Candidate A

65 O Candidate B

66 O Prefer None of the Above

67 When “Prefer None of the Above” appears on the ballot after the list of
68 candidates for an office, you may vote for a candidate and also vote for “Prefer None of

the Above". Voting for "Prefer None of the Above" indicates you found no listed candidate acceptable.

The "Prefer None of the Above" votes are counted and reported; however, the candidate for an office with the most votes is elected whatever the "Prefer None of the Above" vote.

Section 6. Temporary appointment to offices and assignment of duties

Temporary appointment to offices, pending NOTA elections and an elected candidate taking office, required to execute the duties of an office, may be made by the Governor, or by majority vote of the Board of Selectmen for town offices, provided the person so appointed is either the office's current incumbent or would be otherwise eligible for election to that office. Temporary appointment to the office of Governor shall be by majority vote of the General Court. No temporary appointment under this provision shall be made to the offices of Town Meeting Representative, State Representative, State Senator, United States Representative, or United States Senator.

If no appointment is made by the day before expiration of an office's current term, the office's incumbent is appointed by default.

In elections to the office of Secretary of State, or an office for which the incumbent Secretary of State is a candidate, the duties normally performed by the Secretary of State under this act shall be performed by the office of Secretary of State under the direction of the Attorney General.

Section 7. Campaign finance reporting

Candidates in a NOTA election must conform to the same, or equivalent, campaign financing and reporting requirements as a candidate for that office in a general election. Campaign financing and reporting for activities related to the issue of voters voting for "None of the Above; For

91 a New Election”, or for “Prefer None of the Above”, shall have the same, or equivalent, requirements
92 as a ballot question. All such requirements shall be subject to those changes necessary, as determined
93 by the Secretary of State, to adjust for the varying election dates and campaign durations of NOTA
94 elections, provided such changes adhere to the original intent of those requirements and avoid
95 unreasonable burden to election participants.

96 Section 8. Nomination of candidates

97 Any person who is eligible for nomination as a candidate in the general election for an
98 office shall be eligible for nomination as a candidate in a NOTA election for that office, provided the
99 person did not receive, as a listed candidate in a prior election for the same office and term, fewer
100 votes than those cast for “None of the Above; For a New Election” the office.

101 All candidates for office in NOTA elections shall be nominated to be listed on the
102 ballot either by nominating petition, or by receiving a requisite number of write-in votes in the prior
103 election for that office.

104 Section 9. Nomination by petition; eligibility to sign petitions; collecting signatures at polling
105 places

106 The nomination period for a NOTA election shall commence on the day of the prior
107 election. The nomination period shall continue for fourteen (14) days after the results of the prior
108 election for that office are announced by the Secretary of State.

109 Voters eligible to vote in the NOTA election for an office are eligible to sign, once for
110 each nomination, one or more nominating petitions for one or more candidates for that office during
111 the nomination period.

112 Signatures for nominating petitions may be gathered at polling places, provided they
113 are gathered in one, or two if required, Petition Areas that shall be reserved at each polling place for
114 such purpose, and in such a manner as to provide easy access for voters wishing to sign such petitions
115 or not, and in such a manner that voters shall pass by those collecting nominating signatures before
116 and after voting.

117 Any person collecting nominating signatures at a polling place for one or more
118 petitions, hereinafter referred to as Collector, must be registered to vote at that polling place. A
119 Collector may assist in the gathering of signatures for any Nominating Petition. No signed petition
120 may be removed from a Petition Area, except, after the polls close, by the vote counting authority,
121 who shall deliver all signed petitions to the signature verifying authority.

122 The Collector shall be seated in a chair behind a table, provided at no cost to the
123 Collector, upon which such petitions shall be placed and kept while collecting signatures. The
124 Collector shall not speak to, or otherwise communicate with, any voter unless addressed first by that
125 voter, and shall display no sign except, optionally, one reading “Nominating Petition: <office>”, where
126 <office> shall be the name of the office for which the petition is being gathered, using letters no
127 greater than three inches in height and affixed to the table in such a manner as to be visible to passing
128 voters. The number of Collectors in each Petition Area shall be no more than two (2) per one (1) or
129 more petition sheets with the same Candidate and Party designation. A petition may be brought into
130 and left unattended in the Petition Area by any person.

131 The Petition Area shall be part to the polling place, and any person failing to conform
132 to its requirements shall be considered a disorderly person.

133 Section 10. Nomination by write-in

134 An unlisted write-in candidate in the prior election may be nominated to be listed as a
135 candidate for an office in the following NOTA election by receiving write-in votes equal to at least ten
136 percent (10%) of either: a) the number of nominating signatures required for that office; or, b) the total
137 votes cast for the office in the current election. Such candidates shall submit to the Town Clerk in
138 town wide offices, or otherwise the Secretary of State, by the last day of the nomination period, a
139 completed nominating petition, containing no filled in signature lines, with an attached affirmation by
140 the candidate, stating the candidate received the requisite write-in votes for that office in the prior
141 election. Unlisted write-in candidates who do not receive the number of write-in votes needed for
142 nomination may seek nomination by petition.

143 Section 11. Signature verification; number of signatures required; submitting petitions

144 The authority responsible for signature verification for nominations for a office in the
145 general election shall be responsible for verifying the signatures on the nominating petitions for a
146 NOTA election are valid and of the requisite number within fourteen (14) days after the end of the
147 nomination period.

148 The number of valid signatures under the same party designation required for
149 nomination by petition shall be the same for all candidates for the same office and shall be: either
150 equal to the number of the most signatures required for a general election nomination for the office,
151 divided by number of days in the general election nomination period, and then multiplied by number
152 of days in the current nomination period, and then divided by three (3); or, equal to twenty (20),
153 whichever is greater.

154 Each original nominating petition sheet shall be submitted to the offices of the same
155 verifying authority as for general elections, within three (3) days after the end of the nomination
156 period.

157 Section 12. Multiple nominations of a candidate

158 In NOTA elections, if a candidate has been separately nominated with different
159 political party designations, the candidate shall appear on the ballot separately for each such
160 nomination. The same political party designation may not appear with more candidates for an office
161 than the number of positions to be elected to that office. The party designation of either “No Party” or
162 “Write-In” shall be allowed once each for a candidate so nominated.

163 Section 13. Nomination notification and acceptance

164 The Secretary of State, or Town Clerk for town wide elections, shall have delivered to
165 each nominee, within three (3) days of the nominee qualifying for the nomination, a Nomination
166 Notification, notifying the nominee of the nomination, along with other materials determined by the
167 Secretary of State. The nominee shall respond to the Nomination Notification within five (5) days by
168 returning the Nomination Acceptance, as determined by the Secretary of State, to the offices of the
169 notifying authority. Failure to respond shall be deemed an acceptance of the nomination.

170 Section 14. Candidate Statement; requirements and limitations; qualifying for distribution

171 To assist the voters in assessing candidates for office in NOTA elections, the Secretary
172 of State, or Town Clerk for town wide elections, shall distribute Candidate Statements by mail to the
173 electorate at least seven (7) days before the election at no cost to the candidates.

174 When a candidate submits a Nomination Acceptance for an office, the candidate may
175 also submit a Candidate Statement for distribution, which shall be subject to the following

176 requirements and limitations: required to be a black and white statement, consisting only of spaces,
177 letters, punctuation marks, and numeric or other textual notation, contained within both sides of a
178 single 8.5 x 11 inch white paper sheet, and, optionally, one photograph of the candidate from the neck
179 up no greater than 3 x 3 inches, for the purpose of allowing the candidate to communicate with the
180 voters; and, shall be limited to identifying the candidate, and, optionally, describing the candidate's
181 qualifications for office, party affiliations, proposed policies, and contact information; limited to one
182 per candidate, even if the candidate receives multiple nominations for an office; and, shall contain no
183 solicitation for funds nor refer to other candidates. The requirements and limitations of the Candidate
184 Statement must be met, in the opinion of the Secretary of State, in order to qualify for distribution as a
185 Candidate Statement

186 Across the top inch of the first page of every Candidate Statement shall be the
187 Statement Header. The Statement Header shall be blank except for the state seal and the words, in
188 large font, "Candidate Statement of <candidate name> for <office>", where <candidate name> shall
189 be the name of the candidate as it shall appear on the ballot and <office> shall be the name of the
190 office as it shall appear on the ballot; and then, in a smaller font, "Prepared by the candidate and
191 distributed to voters without cost to the candidate by the Office of the Secretary of State."; and then, a
192 line at the lower boundary of the Statement Header; and, anywhere within the Statement Header, any
193 other content determined by the Secretary of State. At Nomination Notification, the candidate shall
194 receive sample Candidate Statements and an assigned Statement Header from the Secretary of State
195 that the candidate is required to use as the Statement Header for any Candidate Statement the
196 candidate submits.

197 The area of the Candidate Statement apart from the Statement Header is the Candidate
198 Content determined by the candidate. The Secretary of State, or Town Clerk for town elections, shall

199 take care to distribute Candidate Content as submitted, except as follows: The Secretary of State, and
200 the Town Clerk for town elections, shall review Candidate Statements submitted to them to insure
201 they qualify for distribution as a Candidate Statement. The Town Clerk shall have delivered to the
202 Secretary of State all Candidate Statements, along with their Candidate Instructions, if any, for final
203 review, within three (3) days of receipt, along with a Town Clerk Opinion, defined by the Secretary of
204 State, indicating whether the Candidate Statement meets the requirements and limits of a Candidate
205 Statement.

206 If, in the opinion of the Town Clerk, a Candidate Statement does not meet the
207 requirements and limits of a Candidate Statement, the Town Clerk Opinion shall include an
208 explanation of the nonconformance, along with a proposed Deletion Notification to make the
209 Candidate Statement conformant, and any other relevant document. Before submitting the Town Clerk
210 Opinion to the Secretary of State, the Town Clerk may contact the candidate directly to verbally
211 suggest changes to the Candidate Statement to make it conformant. If the candidate then submits one
212 or more revised drafts, the Town Clerk shall submit the last such draft as the Candidate Statement,
213 retaining prior drafts as part of the Candidate Statement's record.

214 Should the Secretary of State determine a Candidate Statement does not qualify for
215 distribution because it does not meet the requirements and limits of a Candidate Statement, then the
216 Secretary of State shall have delivered to the candidate, within ten (10) days of the submission of the
217 Candidate Statement by the candidate, a Deletion Notification, defined by the Secretary of State,
218 which shall include a copy of the Candidate Statement to show the deletions needed to bring the
219 statement into compliance and a letter stating the reasons for those deletions. The Secretary of State, or
220 representative, shall meet with the candidate at the offices of the Secretary of State, upon the
221 candidate's request, within two (2) days of receipt of a request for such a meeting, to review the

222 Candidate Statement with the candidate's representatives. The candidate shall have delivered to the
223 Secretary of State within five (5) days of the receipt of the Deletion Notification or within two (2) days
224 after such meeting, whichever is later: the candidate's response to the Deletion Notification; and/or a
225 corrected Candidate Statement; and/or a Candidate Instruction, to be defined by the Secretary of State,
226 in the event of a non qualifying Candidate Statement, instructing Secretary of State either to withdraw
227 the Candidate Statement completely or to distribute the original Candidate Statement with the
228 deletions indicated by the Deletion Notification.

229 Changes to the Candidate Content by Secretary of State shall be by deletion only, using
230 methods to be established in advance of the election by Secretary of State so as to be obvious to voters
231 which parts of the Candidate Content were deleted. Should the candidate fail to provide an acceptable,
232 corrected Candidate Statement and fail to provide Candidate Instructions for such an event, the
233 Secretary of State shall distribute the original Candidate Statement with the deletions specified in the
234 Deletion Notification. The Secretary of State shall make available at its offices to any person, within
235 one day of a written request, copies of any original Candidate Statement as well as associated Town
236 Clerk Opinion, corrected Candidate Statement, Deletion Notification, and Candidate Instruction, and
237 other related documents during the election campaign and for ten (10) years after the election.

238 Whenever possible, all Candidate Statements for the same office shall be assembled
239 into a single ballot pamphlet for distribution. Reference copies of the Candidate Statements shall be
240 made available at polling places for voter use.

241 Section 15. Confirming nominations

242 The Secretary of State, or Town Clerk for town wide elections, shall confirm by Party
243 Confirmation, as defined by the Secretary of State, with the governing body of the designated political
244 party, that the party accepts the party designation on the ballot for a candidate. If the party designation

245 of the nomination is not accepted by the governing body of the party within ten (10) days of
246 notification, or if the authority of the governing body is determined by the Secretary of State to be in
247 dispute, then the candidate shall be listed with a “No Party” party designation. Write-in nominations
248 shall be designated as “Write-In”, or with any other political party designation acceptable to both the
249 candidate and the governing body of the political party.

250 Section 16. Ballot determination; election date determination

251 The Secretary of State shall determine the date, offices, and candidate lists for NOTA
252 elections, and shall announce such determinations, whenever possible, at least thirty days in advance
253 of the date set for the NOTA election.

254 The Secretary of State shall insure, whenever possible, various NOTA Elections take
255 place throughout the state on the same day.

256 Section 17. Counting votes; recounts

257 In cases of multiple listings of a candidate for an office, the number of votes cast for
258 each such listing of a candidate shall be counted and reported separately; however, the sum of all votes
259 for a candidate for an office shall be used in determining the candidate’s vote for election to the office.

260 A qualified write-in candidate who receives more votes than any listed candidate, and
261 more votes than any other write-in candidate, and more votes than “None of the Above; For a New
262 Election” for that office shall be elected.

263 The Secretary of State shall conduct a recount of any election where the number votes
264 cast for “None of the Above; For a New Election” would require, or would allow a candidate to
265 request, a recount if that number of votes had been cast for a candidate, and otherwise act on behalf of
266 voters who cast votes for “None of the Above; For a New Election.” Delegation of this duty to the

267 Secretary of State shall in no way limit voters, who affirm they voted for “None of the Above; For a
268 New Election” in an election, from also acting on behalf of themselves and other such voters.

269 Section 18. Failure to nominate

270 Should no candidate qualify for nomination for an office in a NOTA Election, the
271 office shall appear on the ballot with no listed candidate with only the “None of the Above; For a New
272 Election” line.

273 Section 19. Nominating Petition Description

274 The nominating petitions shall consist of 8.5 x 11 inch white paper with the first printed
275 title line reading “NOTA Election Nominating Petition”;

276 The next printed line shall state: “To be signed only by voters eligible to vote for the
277 office.”;

278 The next printed line of the petition shall state: “For the office of: ”, followed
279 immediately by the title the office, as it appears on the ballot, for which the candidate is to be
280 nominated; and, followed immediately by the text “ for ”; and, followed by the jurisdiction of the
281 office;

282 The next printed line of the petition shall state: “Nominating: ”, followed immediately
283 by the candidate’s legal name and, optionally, in quotes, an informal name, as it is intended to appear
284 on the ballot;

285 The next printed line of the petition shall state: “Whose legal address is: ”, followed
286 immediately by the candidate’s legal address, as it is intended to appear on the ballot;

287 The next printed line of the petition shall state: “Political Party: ”, followed
288 immediately by the name of the political party, as it is intended to appear on the ballot. “No Party” is

289 permitted. "Write-In" is permitted for candidates nominated by write-in votes; and, "For the Town or
290 City:", followed immediately by the name of the town or city where the signers below must be
291 registered to vote.

292 The next printed line shall identify the appropriate columns for voters to fill out with
293 the words "Voter's Name (print)"; "Street Address"; "Signature"; "Date";

294 There shall follow sixteen (16) thin, straight lines, indicating the space for the voter to
295 make a nomination.

296 Section 20. Petition Sample

297 NOTA Election Nominating Petition

298 To be signed only by voters eligible to vote for the office.

299 For the office of: United States Representative for 5th Congressional District

300 Nominating: William P. Doe "Billy Doe"

301 Whose legal address is: 600 Elm Street, Harvard, MA 01451

302 Political Party: No Party For the Town or City: Harvard

303 Voter's Name (print) Street Address Signature Date m/d/y

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320 Section 21. Conflicting provisions

321 The provisions of this act shall prevail over any conflicting provisions of any other law.

322 Section 22. Severability

323 The provisions of this act are severable, and if any of its provisions shall be held
324 unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or
325 impair any of the remaining provisions.

326 Section 23. Effective date

327 The provisions of this act shall take effect two (2) years after enactment.